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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/717,775

11/20/2003

John A. Griego

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8387

28075

7590

04/29/2008

CROMPTON, SEAGER & TUFTE, LLC

1221 NICOLLET AVENUE

SUITE 800

MINNEAPOLIS, MN 55403-2420

EXAMINER

PRONE, CHRISTOPHER D

ART UNIT

PAPER NUMBER

3738

MAIL DATE

DELIVERY MODE

04/29/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/717,775

Applicant(s)

GRIEGO ET AL.

Examiner

CHRISTOPHER D. PRONE

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 August 2007.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,5-7,20-37 and 39-50 is/are pending in the application.
4a) Of the above claim(s) 5,6,20-36 and 44-50 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1,3,7,37 and 39-43 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/21/08 has been entered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent 6,235,026 Smith.

The main embodiment relied upon is shown in figures 8 and 9, but since the full invention is not shown in relation to figures 8 and 9 reference numbers will be used and referred to for figures 1 and 8-9.

Smith discloses the same invention being a surgical snare device comprising tubular sheath (86), a movable shaft (292) extending there through, a swivel (290) having first end coupled to the distal end of the shaft and a second end attached to a

Art Unit: 3738

snare loop comprising proximal leg (294) having a portion disposed within the swivel body (290) shown in figures 8 and 9, and a handle (50) with slide portion (52), wherein the device has a first closed position with most of the snare loop 294 withdrawn back into sheath 86 and a second open position with both parts of the snare loop 24 and 294 extending out from the sheath 86.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 7 is rejected under 35 U.S.C. 103 as being unpatentable over Smith in view of United States Patent 4,326,530 Fleury Jr.

Smith discloses the invention substantially as claimed being a surgical snare device described above. However, Smith does not disclose that the surgical loop includes a braid.

Fleury Jr teaches the use of a surgical loop comprising a braid in the same field of endeavor for the purpose of providing a loop with enhanced fidelity giving the user a better feel for what is happening with the loop.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the braided loop of Fleury Jr with the surgical snare device of Smith in order to provide a loop with enhanced fidelity.

Claims 39-41 and 43 are rejected under 35 U.S.C. 103 as being unpatentable over Smith in view of United States Patent 2002/0151889 Swanson et al.

Smith discloses the same invention being described above. However Smith fails to disclose a loop comprising a plurality of branches that extend within the swivel body.

Swanson teaches the use of a surgical snare comprising a snare loop having a plurality of proximal legs that each extend back to a handle in the same field of endeavor for the purpose of enhancing the operators ability to maneuver and snare objects. (See figures 36-38 and 48-49)

It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the loop member comprising a plurality of proximal legs with the surgical snare device of Smith in order to provide a loop with enhanced maneuverability.

Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Swanson as applied to Claims 39-41 and 43 above, and further in view of United States Patent 4,326,530 Fleury Jr.

Smith as modified by Swanson discloses the invention substantially as claimed being described above. However, the combination does not disclose that the surgical loop includes a braid.

Fleury Jr teaches the use of a surgical loop comprising a braid in the same field of endeavor for the purpose of providing a loop with enhanced fidelity giving the user a better feel for what is happening with the loop.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the braided loop of Fleury Jr with the surgical snare device of Smith as modified by Swanson in order to provide a loop with enhanced fidelity.

Response to Arguments

Applicant's arguments filed 12/12/07 have been fully considered but they are not persuasive.

The applicant argues that the device of Smith does not meet the new claim requirements of claim 1. However since the claims only require the distal end of the shaft to be at the distal region of the sheath. Since the distal end of the shaft and the distal end region of the sheath includes everything from their mid point to their far end the device of Smith clearly meets the claim requirements.

The applicant then argues that the amendments make it impossible to make the combination of Smith and Fleury Jr. This is not convincing because the combination simply takes the teaching of using braided wires and applies that to the device of Smith.

The applicant then argues that the combination is not appropriate because Swanson only teaches connecting the two wires to a knob not a swivel. However the applicant has failed to provide details or drawings showing how it is done within the current application. Figures 3 and 6 show two legs abutting the end of the swivel, but fail to show any portion disposed within the swivel. Therefore the combination provides

Art Unit: 3738

two legs disposed within the end of the swivel as much as that of the current application.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER D. PRONE whose telephone number is (571)272-6085. The examiner can normally be reached on Monday through Fri 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Christopher D Prone
Examiner
Art Unit 3738

/Christopher D Prone/

Application/Control Number: 10/717,775

Page 7

Art Unit: 3738

/Corrine M McDermott/

Supervisory Patent Examiner, Art Unit 3738